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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/880,065	06/14/2001	Makoto Tanabe	209773US2	6438

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OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
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ALEXANDRIA, VA 22314

EXAMINER

YEUNG, GEORGE CHAN PUI

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 02/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/880,065

Applicant(s)

TANABE, MAKOTO ET AL

Examiner

George C Yeung

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 ~~is/are~~ pending in the application.
- 4a) Of the above claim(s) 1-3 ~~is/are~~ withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4 and 5 ~~is/are~~ rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Applicants' election with traverse of the invention of Group II (method claims 4 and 5) in the Response filed October 21, 2003 is acknowledged. The traversal is on the ground that a search and examination of the entire application would not place a serious burden on the Examiner. This is not found persuasive because the search and examination of the entire application, i.e. the Group I apparatus and the Group II method, would not be coextensive. It is clear from reading the scope of apparatus claim 1 that the instant method does not include the same or corresponding special technical features as set forth in the Group I apparatus such as the cross-sectional shape of the surface in the rotating direction of a blade provided in the pot is such that, in a cross section vertical to the rotary shaft of the pot, assuming that a straight line running from an attachment point of blade onto the cylindrical surface toward the center of the rotary shaft is an x coordinate axis, the attachment point is $x=0$ (the origin), and the position of the foot on the x axis of a perpendicular line extending downwards from an end of the blade is $x=1$, and when the height y of the cross-sectional line of the blade is expressed by a function of x, $f(x)$, the x coordinate at which a value of the derived function of $y = f(x)$ becomes 0 is not less than 0.4, and at the same time, the absolute value of the definite integral of the derived function between the where the value of the derived function becomes 0 and $x=1$ is not more than 40% of the absolute value of the definite integral of the derived function until the derived function becomes 0 from $x=0$. Moreover, the apparatus of Group I as claimed is separate and distinct from the method of Group II since the Group I apparatus can be used to practice another and materially

different process, e.g., for use in deep-fat frying potato pieces. See U.S. Patent No 4,001,451 cited by the Examiner herein.

Because the inventions are distinct for the reasons given above, the search and examination of both inventions would not be coextensive. The issues raised in the examination of apparatus claims are divergent from those raised in the examination of method claims. Further, while there may be some overlap in the searches of the two inventions, there is no reason to believe that the searches would be identical. Therefore, based on the additional work involved in searching and examining both distinct inventions together, restriction of the distinct inventions is clearly proper.

The requirement is still deemed proper and is therefore made FINAL.

Specification Objections

1. Pages 10 and 13 of the specification are objected to since they make reference to the originally filed claims 1 and 4 which can obviously be substituted by new amended claims in an amendment to be filed by applicants. Cancellation of reference to claims 1 and 4 in the specification is required.
2. The specification is also objected to because the same reference numeral "3" is improperly used to identify both the rotary pot (see page 13, line 20) and the Blade (see page 36, lines 11 and 25). Furthermore, the same reference numeral "2" is improperly used to identify both the cutting mechanism (see page 13, line 24) and the Blade (see page 36, line 24). No single reference numeral

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can be used for two different parts. See MPEP section 608.01(g). Correction is required.

Drawing Objections

Figures 1-3 are objected to because the reference numerals/characters 1, 2, 3, 4, 5, 6, A and W mentioned in the specification (pages 13, 14, 35, and 36) are not labeled in these drawings. Reference numerals/characters mentioned in the description must appear in the drawings. See MPEP section 608.02(p). Correction is required.

Claim Objections

Claims 4 and 5 are objected to because of the following informalities:

1. The term " wherein" recited in claim 4, line 2 should be changed to -- comprises -- or -- comprising -- in order to conform to the terminology used in the U.S. claim practice.
2. The words "as required " recited in claim 4, line 11, are superfluous and they should be deleted.

Claim rejections-35 USC § 112

Claims 4 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention for the following reasons:

1. It is not clear as to what is meant by "sofrit" and "deglaceing" as recited in claim 1, lines 2 and 10. Applicants are requested to submit a standard reference which shows the definition of "sofrit" and "deglaceing".
2. The term "when" recited in claim 4, line 3 is conditional and futuristic and thus it is not a positive limitation. The claim should be definite and positive as to what is actually being claimed.
3. The limitation "is used" recited in claim 4, lines 2 and 6 is improper since it fails to further impart positive manipulation to the method set forth in claim 4. Moreover, the phrases "such as" and "or the like" (recited in claim 4, line 5) and the term "and/or" (recited in claim 4, line 6) are indefinite. An amendment to claim 4, lines 2-6, changing "a rotary ... oscillated," to - the step of: providing a rotary sautéing machine, putting a mass of cut onion into the rotary sautéing machine, heating the machine with an auxiliary heat source selected from the group consisting of overheated steam, steam and hot air, sautéing the onion mass with a predetermined amount of edible oil while the rotary sautéing machine is oscillated, - - would obviate these rejections.
4. It is not clear what is intended by "materials" (recited in claim 4, line 3) and "a material piece" (recited in claim 4, line 7).
5. It is also not clear what is being "deglaced" as recited in claim 4, line 10.
6. Claim 6 is improper and indefinite since a food product claim cannot be limited by apparatus limitations as recited in claims 1-3. An amendment to claim

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5, lines 1-4, cancelling " by using , ... 1 to 3 or " and an amendment to claim 5, line 1, changing "has been " to - - is - - would overcome this rejection.

Allowable Subject Matter

Claims 4 and 5 are free of the prior art. Claims 4 and 5 would be allowable if amended to overcome the objections and the rejections under 35 U.S.C. 112 set forth in this Office action.

Prior Art Citation

The Veeneman et al patent is cited to show a process for deep-fat frying potato pieces in a rotary deep-fat fryer. The Inakuma et al patent is cited to show a method for continuously roasting food materials such as onion cubes.

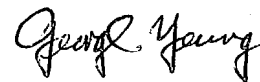
Any inquiry concerning this communication or earlier communications from the examiner should be directed to George C. Yeung whose telephone number is (571) 272-1412. The examiner can normally be reached on Monday-Friday from 10:30 AM to 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-0987.

G.Yeung/af
January 28, 2004

A handwritten signature in cursive script, appearing to read "George C. Yeung".

**GEORGE C. YEUNG
PRIMARY EXAMINER**